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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/523,106	02/03/2005	Hiroshi Dairiki	46242	7579
20736 7590 09/11/2008 MANELLI DENISON & SELTER 2000 M STREET NW SUITE 700 WASHINGTON, DC 20036-3307				
EXAMINER SULLIVAN, DANIELLE D				
ART UNIT		PAPER NUMBER		
1616				
MAIL DATE		DELIVERY MODE		
09/11/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/523,106

**Applicant(s)**

DAIRIKI ET AL.

**Examiner**

DANIELLE SULLIVAN

**Art Unit**

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 June 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI/02)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 06/27/2008 has been entered.

Claims 1-5 are pending examination.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Suwa et al. (JP 05-043402, English translation) in view of Nakayama et al. (US 6,774,087) and Stuart (WO 95/33378).

### **Applicant's Invention**

Applicant claims a granulated composition comprising a pesticidal ingredient, a lignosulfonate with a degree of sulfonation of at least 2 and a sulfate or phosphate salt of polyoxyalkylene arylphenyl ether, wherein the sulfate or phosphate salt is selected

from polyoxyethylene tristyrylphenyl ether sulfate salt and polyoxyethylene tristyrylphenyl ether phosphate salt. Claim 2 limits the amount of lignosulfonate surfactant to 1-15% and the salt of the polyoxyalkylene arylphenyl ether to 0.01-15%.

**Determination of the scope and the content of the prior art**

**(MPEP 2141.01)**

Suwa et al. teaches a granular composition comprising one or more agrochemical active ingredients, a surfactant selected from lignosulfonate and a surfactant selected from polyoxyethylene styrylphenylether sulfates and their salts [0006]. The lignosulfonate can range between (5-30%) and the polyoxyethylene styrylphenylether can range between (1-10%) [0007].

**Ascertainment of the difference between the prior art and the claims**

**(MPEP 2141.02)**

Suwa et al. does not teach that the lignosulfonate requires a degree of sulfonation of at least 2. It is for this reason that Stuart is added.

Stuart teaches the production of improved pesticides which are resistant to environmental degradation by the addition of a UV protectant (abstract). The UV protectant includes lignosulfonates having a degree of sulfonation from 1-8 (page 8, lines 12-20).

Suwa et al. teaches polyoxyethylene styrylphenylether sulfates, phosphates and their salts however, the particular species selected from polyoxyethylene tristyrylphenyl ether sulfate salt and polyoxyethylene tristyrylphenyl ether phosphate salts are not taught. It is for this reason that Nakayama et al. is joined.

Nakayama et al. teaches herbicidal composition comprising sulfate-type and phosphate type surfactants and their salts. The surfactants include polyoxyethylene (mono, di or tri)styrylphenyl ether sulfates, polyoxyethylene (mono, di or tri)styrylphenyl ethers phosphates and their salts (column 1, lines 51-65; column 2, lines 24-37 and 56-65).

### **Finding of prima facie obviousness**

#### **Rationale and Motivation (MPEP 2142-2143)**

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Suwa et al. and Stuart to utilize a lignosulfonate with a degree of sulfonation of at least 2. One would have been motivated to use a lignosulfonate with a degree of sulfonation of at least 2 because Stuart teaches that lignosulfonates within this sulfonation range act as UV protectants on pesticides and therefore protect the pesticide from environmental degradation.

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Suwa et al. and Nakayama et al. to utilize polyoxyethylene tristyrylphenyl ether sulfate salt and polyoxyethylene tristyrylphenyl ether phosphate salt. One would have been motivated to use these ingredients because Nakayama et al. teaches that they are equivalent to polyoxyethylene styrylphenylether sulfates, phosphates and their salts. Therefore, it would have been obvious to substitute the ingredients during routine optimization in order to obtain composition having similar properties.

Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Suwa et al. (JP 05-043402, English translation) in view of Nakayama et al. (US 6,774,087), Stuart (WO 95/33378) and in further view of Suzuki et al. (US 5,980,926).

### **Applicant's Invention**

Applicant claims the composition as addressed in above 103(a) rejection. Claim 3 specifies the active is cyflufenamid. Claim 4 specifies the composition comprises an active selected from triflumizole, etc. Claim 5 specifies the active comprises cyflufenamid and triflumizole.

### **Determination of the scope and the content of the prior art**

#### **(MPEP 2141.01)**

The teachings of Suwa et al. (JP 05-043402, English translation), Nakayama et al. (US 6,774,087) and Stuart (WO 95/33378) are addressed in above 103(a) rejection.

### **Ascertainment of the difference between the prior art and the claims**

#### **(MPEP 2141.02)**

Suwa et al. does not teach the particular pesticides cyflufenamid and triflumizole. It is for this reason that Suzuki et al. is joined.

Suzuki et al. teaches water dispersible granules suitable for preparing the formulations of pesticides with excellent dispersibility (abstract, column 2, lines 10-16). The pesticidal components preferably include triflumizole (column 2, lines 45-47. Example 1), cyflufenamid (structure of formula [1], column 3, Table 1, No. 1, Example 4) or a combination of the two (column 2, line 39-column 4, line 25). Additionally, the

granule is combined at the wet milling process with tristyril phenyl ether added thereon with polyoxyethylene (column 4, lines 26-34). Also, a dispersion aid, sodium liginsulfonate was added at the time of wet milling (column 4, lines 35-41).

### **Finding of prima facie obviousness**

#### **Rationale and Motivation (MPEP 2142-2143)**

It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Suwa et al. and Suzuki et al. to use triflumizole and cyflufenamid. One would have been motivated to utilize triflumizole and cyflufenamid because Suzuki et al. teaches that they preferably formulated into water dispersible granules and provide excellent dispersibility.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lundstedt (US 6,855,327) teaches REAX 100M is known, as well as a wide range of sulfonated lignosulfonates, to be used in granular compositions. Katayama et al. teaches that a degree of sulfonation greater than 2 is known a known property of water dispersible granular compositions.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danielle Sullivan whose telephone number is (571) 270-3285. The examiner can normally be reached on 7:30 AM - 5:00 PM Mon-Thur EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on (571) 272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Danielle Sullivan  
Patent Examiner  
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